

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID IVERSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 11-1108
	)	
JAMES C. BARNACLE; CINDY G.	)	Judge Terrence F. McVerry
WATSON; BRIAN V. COLEMAN;	)	Magistrate Judge Maureen P. Kelly
CAPT. W. LEGGETT; LT. HOOPER;	)	
LT. F. SALVAY; ROBERT TRETINIK;	)	
TOM HOVANIC; D.D. STROTMAN;	)	
JOHN ALBRIGHT; C/O I ROLL; SUPT.	)	
JOHN K. MURRAY; MAJOR JOHN	)	
HORNER; RODNEY CARBERRY;	)	
SM. SCOTT FAIR; LT. W. TIFT,	)	
Defendants.	)	

**ORDER**

David Iverson (“Plaintiff”), a prisoner currently incarcerated in the State Corrections Institution at Fayette (“SCI-Fayette”), has filed this *pro se* civil rights action against various supervisors and corrections officers employed by the Pennsylvania Department of Corrections (“DOC”) at both SCI-Fayette and the State Corrections Institution at Camp Hill (“SCI-Camp Hill”). Plaintiff alleges claims pursuant to 42 U.S.C. § 1983 for the violation of his rights under the First, Eighth and Fourteenth Amendments to the United States Constitution, as well as claims for relief pursuant to 42 U.S.C. §§ 1981, 1985 and 1986. Defendants have filed a Partial Motion to Dismiss Plaintiff’s Amended Complaint [ECF No. 50], based upon (1) the misjoinder of claims arising out of Plaintiff’s confinement at SCI-Camp Hill; (2) the patent expiration of the statute of limitations with regard to claims arising prior to August 11, 2009; (3) Plaintiff’s conceded failure to exhaust prison grievance procedures as to claims arising out of an incident at

SCI-Fayette on March 30, 2011; (4) Plaintiff's failure to allege facts giving rise to a claim upon which relief can be afforded with regard to claims for retaliation, verbal threats and placement in a "strip" or "hard cell" without personal property after throwing a cup of liquid at a corrections officer; and, (5) the lack of involvement of the majority of the Defendants as to all remaining claims, thereby requiring their dismissal from this action.

This case was referred to United States Magistrate Judge Maureen Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates. On July 6, 2012, the Magistrate Judge issued a Report and Recommendation, ECF No. 58, recommending that Defendants' Partial Motion to Dismiss be granted in part and denied in part. The parties were allowed until July 23, 2012, to file objections and Plaintiff has filed his objections to the Report. Upon *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, which is adopted as the Opinion of this Court, the following order is entered:

AND NOW, this 29th day of August, 2012,

IT IS HEREBY ORDERED that Defendant's Partial Motion to Dismiss, ECF No. 50, is granted in part and denied in part as follows:

1. Defendants Barnacle, Salvay, Coleman, Watson, Tretinik, Hooper Fair, Horner and Murray are dismissed from this action;
2. Plaintiff's claim regarding alleged unsanitary conditions of his confinement at SCI-Camp Hill against Defendant Carberry is dismissed without prejudice to be filed in the United States District Court for the Middle District of Pennsylvania, with the payment of the requisite filing fee and Defendant Carberry is otherwise dismissed from this action;

3. Plaintiff's claim regarding an incident on March 11, 2011, involving allegedly tainted chicken, is dismissed as a result of Plaintiff's admitted and unexcused failure to exhaust administrative remedies;
4. The Partial Motion to Dismiss with regard to remaining claims against Defendant Tift and Albright for an allegedly retaliatory transfer to SCI-Camp Hill, is denied.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the parties desire to appeal from this Order, they must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.

BY THE COURT:

s/ Terrence F. McVerry  
TERRENCE F. McVERRY  
United States District Judge

cc: Maureen P. Kelly  
United States Magistrate Judge

All counsel of record via CM/ECF

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